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Issue Paper HUMAN RIGHTS BRIEFS WOMEN IN INDIA October 1995

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MAP OF INDIA

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Source: *Countries of the World and Their Leaders Yearbook 1994*. 1994. Vol. 1. Edited by Thomas F. Bowen and Kelly S. Bowen. Detroit: Gale Research.

GLOSSARY

Dalit

One name given to the people formerly known as untouchables, meaning downtrodden or oppressed

Devadasi

Tradition of dedicating young girls to the service of a deity

harijan

Name given by Mahatma Ghandi to the people formerly known as untouchables, meaning literally Children of God

iddat

Period of time during which a husband must maintain his wife in a divorce case which is equal to three menstrual periods; a three-month period during which she cannot remarry

meher

Negotiated wealth held by a husband for his wife which must be returned upon their divorce under Islamic law - entitlement of wife through marriage to a sum of money or other property (also known as mehr)

panchayat

Village council, especially in rural areas

pardah

Tradition, both Muslim and Hindu, of secluding women

sati

Tradition of widows dying on their husband's funeral pyre

talaq

The declaration of divorce. The practice of dissolving a marriage by uttering the phrase talaq-el-bida three times in succession

1. INTRODUCTION

In its 1994 statement to the United Nations Human Rights Commission, the government of India recognized the diversity of women in Indian society:

It is not easy to talk in general terms about the socio-economic or legal status of women in India because women cut across a number of socio-economic, cultural and religious groups in the country and enjoy status depending upon the section or group to which these women belong. We, therefore, have women who are highly educated, well trained, commanding respect in society and occupying positions of authority. At the other end of the spectrum we have women who are illiterate and poor (Permanent Mission of India 28 Feb. 1994, 1; see also *CJWL* 1993, 280, 283).

Seventy-five per cent of Indian women live in rural areas (*CJWL* 1993, 280). There are differences between the lives of rural women and urban women. For example, women's literacy in rural

areas is approximately 25 per cent (IPS 30 Sept. 1992), whereas in urban regions it is approximately 54 per cent (Bose Jan. 1992, 28). India exhibits strong regional differences, as well as divisions formed by the deeply entrenched caste system (*Country Reports 1992 1993*, 1144). Economic divisions also exist: 40 per cent of the inhabitants of urban areas and 51 per cent of the inhabitants of rural areas live below the poverty line (*ibid.*, 1134), and, while poverty is not restricted to the women of India, there is evidence that it has a disproportionate effect on them due to their inferior socio-economic status and the division of labour based on gender (*CJWL 1993*, 280, 282).

2. LEGAL RIGHTS

2.1 *International Obligations*

India has ratified the International Covenant on Economic, Social and Cultural Rights (1979), the International Covenant on Civil and Political Rights (1979), the Convention for the Suppression of the Traffic in Persons, the Convention on the Exploitation of the Prostitution of Others, the International Labour Organization Convention No. 100 on Equal Remuneration and the Convention on the Political Rights of Women (Johnston 3 Jan. 1994, 3; *HRLJ* 1 Jan. 1993, 64, 67, 70).

India has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (Johnston 3 Jan. 1994, 3). The government made at least one reservation to the convention by way of a declaration, stating it will not interfere in the "personal affairs" of any community without that community's initiative or consent (*CJTL 1990*, 486). This has been interpreted by at least one source as an indication that the government is unwilling to change the religion-specific personal laws that discriminate against women in such areas as marriage, divorce and inheritance (*ibid.*).

2.2 *The Constitution*

The constitution of India, which came into effect in 1949, contains a section on fundamental rights for all citizens. Section 14 provides that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" (Blaustein Oct. 1990, 48). Subsection 15(1) prohibits state discrimination based on the grounds of religion, race, caste, sex or place of birth, and subsection 15(2) adds that no one is to be denied access to public and state-funded services and facilities. Subsection 15(3) states that the government may make special provision for women and children (*ibid.*, 49).

2.3 *The Indian Penal Code*

[All references to the Indian Penal Code (IPC) are taken from: Ranchhoddas and Thakore. 1987. *The Indian Penal Code*. 26th ed. Revised by Mr. Justice M. Hidayatullah. Nagpur: Wadhwa and Co.]

Indian criminal law is set out in the Indian Penal Code. The penal code addresses crimes against women in several sections and deals with such things as voluntarily causing a miscarriage for reasons other than the health of the woman (s. 312); assaulting a woman with the intent of "outrag[ing] her modesty" (s. 354); enticing a minor "out of the keeping of the lawful guardian" (s. 361); abducting a woman and compelling her to marry or forcing or seducing her to engage in illicit intercourse (s. 366); exporting girls under 18 (s. 366a) and importing girls under 21 (s. 366b) for the purposes of prostitution; dealing in slaves (s. 370) and selling or buying a minor for the purposes of prostitution, including the dedication of girls as Devadasi [Devadasi is a religious practice in which young girls are dedicated to the service of a goddess. Their "service" takes the form of prostitution (Gilada and Thakur Mar. 1991, 29; *Women Magazine* July 1993, 64). See section 4.6 for more information.] (ss. 372 and 373).

The penal code has a section on offences relating to marriage. These offences include deceiving a woman to believe she is married and then cohabiting with her (s. 493), committing bigamy (s. 494) and committing adultery with a married woman (s. 497). An adulterous married woman is not punished as an abettor (s. 497). Section 498(a) of the penal code makes it a crime for a husband or his relatives to act in such a way as to drive his spouse to commit suicide or to cause her harm or injury. The crime carries a punishment of up to three years imprisonment and a fine. The penal code also addresses rape (see section 4.5) and domestic violence (see section 4.1).

2.4 Other Legislation

Other legislation addressing women's rights includes the Equal Remuneration Act 1976, the Maternity Benefits Act 1961, the Medical Termination of Pregnancy Act 1971 and certain provisions of the Hindu Marriage Act 1955. These acts are dealt with elsewhere under sub-sections 3.5, 3.6, and 4.3.

Although the legislation cited above is intended to protect women's rights, critics note that it does not affect the majority of Indian women (*BCTWLJ* 1993, 64; *CJWL* 1993, 290, 293). *Country Reports 1993* states that the laws are not always enforced, especially in rural areas, due to social and religious practices (*Country Reports 1993* 1994, 1350). One report states that laws prohibiting violence against women, although strong, are "widely ignored" (*Dallas Morning News* 7 Mar. 1993, 6).

3. STATUS OF WOMEN

A number of sources indicate that women generally occupy a lower social status than men in India (*The Toronto Star* 4 Feb. 1993, A17; Liddle and Joshi 1986, 177-185; *BCTWLJ* 1993, 63; IHDSF 15-18 Feb. 1988, 8). In traditional Hindu law, the son is the "sole object of worship" and the daughter is to be "despised and detested" (*ibid.*). According to one report "much of the law fails under the weight of 3,000 years of celebrating sons and despising daughters" (*Dallas Morning News* 7 Mar. 1993, 2).

There is a marked preference for boy children (*NPR* 11 Sept. 1994; *The New York Times* 27 Aug. 1994; *WIN News* Summer 1993, 61; Kelkar 1992, 81). One of the reasons given for this preference is that "... a girl is *paraya dhan* (some one else's wealth)" as she, and everything invested in her training or education, is lost when she moves to her husband's home upon marriage (*Widows, Abandoned and Destitute Women* 1989, 4). According to one author, this attitude plays a large role in the treatment of female children (*ibid.*).

3.1 Casteism

[For overviews of the caste system see: *Human Rights Law Journal* [Kehl am Rhein]. 1990. Vol. 11, Nos. 1-2. Roshani M. Gunewardene. "The Caste System: A Violation of Fundamental Human Rights?"; Minority Rights Group. 1982. *The Untouchables of India*. London: MRG.]

The caste system, which is over 2,000 years old, is integral to Indian social and cultural relations. It is a part not only of Hindu society but of Muslim, Sikh and Christian societies as well. Within the four principal castes (Brahmin, Kshatriya, Vaishya and Sudra) there are thousands of sub-castes, which differ from region to region (*MRG* 1982, 4; Liddle and Joshi 1986, 58).

One group, formerly referred to as "untouchables" or "outcasts" is considered to be "beyond the pale of the caste system" (*ibid.*). These terms are seldom used now and members of this group, who make up 15 per cent of the population (*Encyclopedia of the Third World* 1992, 811), are commonly referred to as scheduled castes as the concept of untouchability was banned in Article 17 of the constitution and in the Untouchability (Offences) Act 1955 (*MRG* 1982, 7). They are also called

harijans or Dalits, although Dalits refers to an economic category and is not exclusive to scheduled castes (*ibid.*, 4-5). Along with the "levelling effects of urbanization, industrialization, education and the numerical superiority of the lower castes at the polls," the legislation on untouchability has, according to one source, contributed to a less rigid social climate (*Encyclopedia of the Third World* 1992, 811). *Country Reports* 1993 states, however, that untouchability "remains very much a part of life in India" (*Country Reports* 1993 1994, 1351). According to *Women Magazine*, Dalit women face double discrimination because of their gender and caste (*Women Magazine* July 1993, 63).

The caste system comprises a hierarchy of values with the higher castes generally considered to be the most pure (Liddle and Joshi 1986, 58-59). Economic power alone is not enough to move up in the caste hierarchy; a group must also emulate the signs of purity of the highest castes, one of which is tight constraints on women (*ibid.*). These constraints take various forms such as the tradition of *purdah* (the veiling and seclusion of women), arranged marriages, prohibitions on divorce, *sati* (widow burning) and the removal of women from public life, including the workforce (*ibid.*, 63-67).

The tradition of *purdah* is practised by both Muslim and Hindu communities (*ibid.*, 90). The *purdah* tradition is much stronger in the north (*ibid.*). One study found that in the northern state of Uttar Pradesh, 45 per cent of the women were veiled, in comparison to 5 per cent in the southern state of Tamil Nadu. It also found that women were more socially active in Tamil Nadu than in Uttar Pradesh (Basu 1992, 60-62).

Tensions between castes often erupt in violent clashes (UPI 10 Feb. 1994; *International Herald Tribune* 18 Feb. 1994; see also Asia Watch 20 Sept. 1992). According to sources, much of the violence is directed at the lower castes by the higher castes (*Encyclopedia of the Third World* 1992, 815; *Country Reports* 1993 1994, 1351-2), and reports of rapes and murders of lower-caste women have increased (Kelkar 1992, 80; *International Herald Tribune* 18 Feb. 1994). In January 1994, a *harijan* woman was stripped and paraded naked in the street of a village in Uttar Pradesh; no one intervened. The state government compensated her and suspended the local police inspector after the incident was reported in the media and aroused a public outcry (Xinhua 25 Jan. 1994; see also *International Herald Tribune* 18 Feb. 1994). This was the third such incident within a month (*ibid.*). In 1988, during a raid on a Bihar village, some policemen took part in a mass rape of lower caste women (Kelkar 1992, 80). The accused were later acquitted because, according to defence council, the women were engaged in menial jobs and therefore of questionable character. For this reason, according to reports, their testimony was not considered to be believable (*ibid.*). Agricultural labourers are reportedly often victims of the upper-caste landowners who use mass rapes to repress the poor, landless castes (*ibid.*).

3.2 Women in the Workforce

The Constitution of India contains a number of provisions of benefit to women in the workplace. Article 16 (1) of the constitution prohibits sex discrimination in matters relating to employment or appointment to government jobs, while article 39(d) supports the principle of equal pay for equal work (Blaustein Oct. 1990, 49, 62). Article 42 makes clear the state's obligation to "make provision for securing just and humane conditions of work and for maternity relief" (*ibid.*, 63).

Two pieces of legislation that directly address the situation of women in the workforce are the 1961 Maternity Benefit Act and the Equal Remuneration Act, 1976 (*CJWL* 1993, 291-92). The Maternity Benefit Act prohibits employers from requiring that women work while pregnant and requires that they provide 12 weeks paid maternity leave and breaks for working mothers to nurse their children. The Equal Remuneration Act, 1976 and Equal Remuneration (Amendment) Act 1987 not only oblige an employer to pay men and women equally for the same work or "work of a similar nature," but also

prohibit discriminatory practices in hiring, training and promotions (*Legal Perspectives* n.d. Doc No. 20, 2; *Human Rights in Developing Countries Yearbook 1991* 1991, 182). The Domestic Workers Service Bill of 1990 sets maximum limits for hours of work and stipulates minimum wages for domestic workers (*WIN News* Autumn 1990b, 58).

Since the early twentieth century the participation of women in the paid workforce has been declining, both in absolute numbers and as a percentage of the total labour force (Calman 1992, 58; *Manushi* July-Aug. 1991, 11). Between 1911 and 1971 the percentage of women in the organized labour force declined from 34.4 per cent to 17.3 per cent (*ibid.*). This trend has accelerated in recent years as employers in the unionized industrial sector have pursued a deliberate policy of reducing their reliance on organized labour (*ibid.*, 10). Census figures indicate that by 1981 only 6 per cent of the female labour force was employed in the organized sector (*ibid.*, 12; Calman 1992, 58). More recent statistics are not available among the sources consulted by DIRB. As women workers are generally the first to be terminated (*Manushi* July-Aug. 1991, 11), women have become increasingly reliant on employment in the unorganized sector (Calman 1992, 58), where wages are lower than in industry (*Country Reports* 1992 1993, 1144) and workers are largely outside the reach of most legislation designed to protect them from unsafe working conditions (Calman 1992, 58). Although legislation protecting women in the organized sector does exist, Leslie Calman, director of the Barnard Center for Research on Women, describes it as "nearly useless." Minimum wage laws are often ignored by employers, and poverty, illiteracy and the casual nature of employment further contributes to the problem (Calman 1992, 59).

One example of the economic exploitation of women workers in the industrial sector can be found in the match and fireworks factories of Tamil Nadu state. The work is dangerous, the pay low and the factories are non-union and staffed almost exclusively with girls and women (*The Globe and Mail* 20 Nov. 1993b, D1, D3). In 1993, the Tamil Nadu government began a five-year project to eliminate child labour in the match and fireworks industries (*Child Asia* 1993a, 9). The DIRB has no information on the progress of this project at the time of writing.

Family-run businesses and cottage-industries, in which the majority of workers are women and children, are exempt from much of the labour standards legislation (Gathia 1990b, 197, 199; *Encyclopedia of the Third World* 1992, 826). The contractual system allows many industries to evade the requirements of the Factories Act, Minimum Wages Act and Child Labour Act, while subcontracting, by keeping the number of full-time workers to a minimum, enables employers to hide the true size of their enterprises (Gathia 1990b, 197). Gathia indicates that the participation rate in home-based industries is higher for girls than for boys, with more boys than girls attending school (*ibid.*, 199). He also points out that women and girls are seen as "fit to do only the most routine and unskilled low-paid jobs," are invariably employed in piece-work and are more often exposed to hazardous working conditions than are boys (*ibid.*).

A United Nations study entitled *Women's Education and Fertility Behaviour* found that Indian women's economic activity decreases as they become more educated, suggesting that, at least for women, there is a greater correlation between poverty and workforce participation than between education and workforce participation (United Nations 1993b, 10). The study did note that there was an upswing in women's participation in the workforce at the top levels of education, which was mainly due to their participation in non-agricultural activities (*ibid.*; see also Liddle and Joshi 1986, 72-73). One report indicates that new employment opportunities are more readily available for middle-class women than for unskilled or semi-skilled workers (*Manushi* July-Aug. 1991, 10). Women's employment in transport, communications and financial services has increased as these sectors have grown, but

workers in these fields comprise only a fraction of the total workforce (*ibid.*).

3.3 Women in Political Life

Women were granted the right to vote in 1950 (United Nations 1991, 41). Their representation in government is approximately ten per cent in the Council of States (Rajya Sabha or upper house) and approximately seven per cent in the House of the People (Lok Sabha or lower house) (Inter-Parliamentary Union 1991, 98-99; see also UNDP 1992, 145). Despite their low numbers in government, women have been highly visible participants in Indian politics although some sources point out that women politicians are frequently not representative of Indian women as a whole (*CSR Newsletter* Sept. 1993, 7; *Women in Action* 1994, 15). A May 1993 study on women parliamentarians concluded that "not many women from the grass-roots level are coming up to the National Legislature" (*CSR Newsletter* Sept. 1993, 7). Vibhuti Patel, in an article in *Women in Action* (published by ISIS, an international women's rights organization which coordinates the International Feminist Network), writes that most women wanting to enter politics face opposition from family, community and male political leaders. According to her, "the present political leadership, in spite of its populist rhetorics, wants to keep women out of the political scene. Women politicians are still looked upon as appendages to the males in the political arena" (*Women in Action* 1994, 15).

Patel notes that many women politicians are from the "elite" and that their "political presence" derives from male relatives also involved in politics (*ibid.*, 14-15). A number of other sources also indicate that the women who are elected to office are often relatives of prominent politicians, past and present (*CSR Newsletter* Sept. 1993, 7; IPS 19 Nov. 1993; *The Economist* 17 Dec. 1993, 82; Calman 1992, 61). The result, according to some observers, is that the interests of women are not well represented (*ibid.*). Women's groups complain that the issues they raise are appropriated by the parties only when they are politically expedient (IPS 19 Nov. 1993). The May 1993 study on women parliamentarians found that within political parties there is a "marked non-involvement" of women in the decision-making bodies and that women's issues tend to be considered as social rather than political issues (*CSR Newsletter* Sept. 1993, 7).

Women in rural areas in particular "play only marginal roles in politics," according to one report (IPS 19 Nov. 1993). Until recently, men had a monopoly over village councils, or *panchayats*, and over decision-making in practically every part of the country (*India Today* 15 Apr. 1993, 52). Members of the *panchayats* are now elected, and 30 per cent of the seats are reserved for women (Kapur 29 Apr. 1994). Ratna Kapur, a feminist lawyer in New Delhi, notes that men on the councils have not always been representative of the community and points out that, as such is also the case with the new female members, reserving seats for women may not make much difference (*ibid.*).

3.4 Education Issues

Section 45 of the Constitution requires the Indian government to undertake a programme of compulsory education for everyone up to the age of fourteen (Blaustein Oct. 1990, 64). Tamil Nadu is the only Indian state that has indicated it will introduce legislation to enforce this requirement (*Child Asia* 1993a, 9; *The National Journal* 25 June 1994, 1510), although, according to Joseph Gathia of the Centre of Concern for Child Labour in New Delhi, it had not yet done as of August 1994 (Gathia 8 Aug. 1994). The state has, however, passed a bill that imposes a fine on parents who do not send their children under 14 to school (*ibid.*).

India's 1991 census report showed the female literacy rate to be 40 per cent (IPS 30 Sept. 1992; Xinhua 4 Nov. 1993), with considerable differences between regions (Bose Jan. 1992, 28). For example, in Kerala the female literacy rate is reportedly between 70 and 80 per cent (Kapur 1991, 10;

The Globe and Mail 20 Nov. 1993b, D-1). In Rajasthan, Uttar Pradesh, Madhya Pradesh and Bihar, whose populations together account for 40 per cent of India's total population, the female literacy rate is reported to be below 30 per cent (IPS 23 June 1994). Generally, literacy is highest among Brahmins, Christians, Parsis and Jains, and is higher in the south than in the north (*Encyclopedia of the Third World* 1992, 831; see also Gathia 1990a, 9).

Overall, females in India receive less education than males (United Nations 1993b, 7). In Tamil Nadu, for example, it is reported that 70 per cent of the boys go to school while 80 per cent of the girls work full time (*The Globe and Mail* 20 Nov. 1993b, D-1; *Child Asia* 1993a, 9). The UNDP reports that in 1990 Indian female children received approximately one-third the schooling of male children (UNDP 1992, 145; see also *The Toronto Star* 4 Feb. 1993, A17). The Ministry of Education, cited in a report by A. B. Bose, indicates that there has been a drastic improvement in enrolment figures since mid-century, both in absolute numbers and the percentage of children in school. [Bose comments, however, that these figures are affected by over-reporting, under-age and over-age of children in a class, and grade repetition.] The ratios for girls remain lower than those for boys, however (Bose Jan. 1992, 30).

Girls in rural areas are much less likely to go to school than those in urban areas (Calman 1992, 62; *The Globe and Mail* 20 Nov. 1993, D-1). The 1981 census showed that female literacy in rural areas was approximately 18 per cent compared to 48 per cent in urban areas (Rhodie 1989, 399); these figures had risen to 25 and 54 per cent by the time of the 1991 census (IPS 30 Sept. 1992; Bose Jan. 1992, 28).

Drop out rates for both boys and girls are high, especially in the high schools (Bose Jan. 1992, 31). The rates for girls at the lower levels, however, are reportedly higher and increase as a girl approaches puberty; primary school enrolment of girls as a percentage of that of boys was 97 for 1988-89 but dropped to 45 per cent for tertiary enrolment (UNDP 1992, 145; Bose Jan. 1992, 32). One reason advanced for the drop in attendance is that, once a girl reaches puberty, she is often restricted by custom to her home and is expected to marry (Gathia 1990a, 10; *The Toronto Star* 4 Feb. 1993, A17). Higher education is usually available only for girls from the upper and middle classes, most of whom are from urban areas (Calman 1992, 62).

3.5 Health Issues

The preference for male children has an impact on female health care (Calman 1992, 61). Parents often give nutritional and health care priority to male children (NPR 11 Sept. 1994; *The New York Times* 27 Aug. 1994; *Country Reports* 1993 1994, 1351; Gathia 1990a, 7). Girls receive less breast milk, are weaned earlier, are given less food and receive medical services less frequently (*The Toronto Star* 4 Feb. 1993, A17; *ILSA Journal of International Law* 1992, 112). In addition, there is a marked disparity between male and female infant mortality rates (*Country Reports* 1992 1993, 1144).

Another factor contributing to women's poor health is the tradition of early marriages, and subsequent early and frequent childbirth and lactation (Calman 1992, 61; *The Globe and Mail* 3 Mar. 1994). The average fertility rate in 1990 was 3.8 children per woman (*Encyclopedia of the Third World* 1992, 809). Because they are often malnourished, women are at risk of dying in childbirth (*The Toronto Star* 4 Feb. 1993, A17). The national maternal mortality rate in India in 1988 was 550 per 100,000. The average rate for all developing countries was 420 per 100,000 and for industrial countries, 26 per 100,000 (UNDP 1992, 151). A United Nations study on abortion policies notes that the high number of unsafe abortions in India contributes to the high rates of maternal mortality (United Nations 1993a, 59).

Prior to 1977 the Indian government had a strict three-child policy that included mandatory sterilization after the third child (*Encyclopedia of the Third World* 1992, 810). Although all elements of compulsion have been removed, the government continues to promote two-child families by means of incentives and direct support for contraceptive use (*ibid.*; United Nations 1989, 64). Nevertheless, contraceptive use is apparently not widespread. A study of abortion policies by the United Nations estimates that up to 80 per cent of women in India who have abortions do not use contraceptives (United Nations 1993a, 57-58). However, a study of family-planning policies undertaken by W. Parker Mauldin and John A. Ross, the results of which are included in UNICEF's 1994 *Progress of Nations*, indicates that, compared to other poor and populous countries, India's family-planning effort is doing well (UNICEF 1994, 26). According to the study the percentage of married women using some form of family-planning in India is 43 - three percentage points higher than the South East Asian regional average (UNICEF 1994, 26). A 1988 United Nations survey found that 39 per cent of married women in India used modern contraceptive methods (United Nations 1993a, 57).

The Medical Termination of Pregnancy Act 1971, which significantly liberalized abortion laws in India, was meant to reduce the number of illegal abortions (*ibid.*). Studies show, however, that while educated, urban, middle-class families use the approved facilities, the majority of abortions performed remain illegal and unregistered (*ibid.*, 58). It is estimated that there are between two and six million illegal abortions per year, compared to approximately one million abortions in approved facilities (*ibid.*).

3.6 Personal Laws

Although all Indians are governed by national criminal law, some private matters, such as marriage, divorce and property, are covered by their respective religious laws. Hindus comprise the majority of the population of India (78.8 per cent), followed by Muslims (11.6 per cent), Christians (3.9 per cent), Sikhs (2 per cent), Buddhists (0.8 per cent), Jainists (0.5 per cent), Parsis and Jews. The aboriginal inhabitants of the country make up three per cent of the population (*Encyclopedia of the Third World* 1992, 810-811). *Country Reports 1992* states that "the family, marriage and inheritance laws of several of India's religious communities manifest legally sanctioned gender discrimination" (*Country Reports 1992* 1993, 1144; see also Calman 1992, 53; *BCTWLJ* 1993, 67; *Country Reports 1993* 1994, 1351). There have been legal challenges to some of the personal laws (Kapur 29 Apr. 1994; *BCTWLJ* 1993, 68), especially those provisions addressing property, based on the constitutional guarantee of equality, but reportedly the courts have been reluctant to apply the constitution in domestic economic matters (*BCTWLJ* 1993, 68). In the early 1980s the concept of public interest litigation was introduced. According to *Manushi*, a women's newsletter published in New Delhi, while human rights advocates were enthusiastic about pursuing several cases dealing with gender equality and property and inheritance rights, the results were disappointing (*Manushi* Mar.-Apr. 1994, 11). Brenda Cossman and Ratna Kapur, writing in the *Canadian Journal of Women and the Law*, comment that "the impact of these laws varies according to class. (*CJWL* 1993, 288-289). For women in the lower economic classes, basic necessities and survival come before family law matters (*ibid.*).

3.6.1 Marriage

Each religious community in India has a set of rules governing the formalities and procedures that constitute marriage in that community. As it is not within the scope of this paper to detail these formalities, this section primarily indicates which legislation, if any, regulates marriage for each community.

Marriage for Hindus, Buddhists, Jains and Sikhs is covered by the Hindu Marriage Act 1955 and the Hindu Adoptions and Maintenance Act 1956. The latter requires a husband to maintain his wife

(section 18). If her husband is bigamous or guilty of desertion, has treated her so cruelly that she fears harm if she were to stay with him, suffers from leprosy, keeps a concubine in the house or has ceased to be Hindu, a wife may receive maintenance while living apart from her husband (section 18(2)). Section 18(3) removes the right to maintenance if the wife has been unchaste or ceases to be Hindu ([*Indian Legal Documents*] n.d.).

Muslim personal law is not codified in India; marriage and property laws are prescribed by the Koran and shariah law. Divorce for Muslims, however, is covered by the Dissolution of Muslim Marriages Act 1939 (Calman 1992, 152).

The procedures and formalities for marriage for Christian Indians are covered by the Indian Christian Marriage Act 1872 ([*Indian Legal Documents*] n.d.).

The Indian government enacted the Special Marriage Act in 1954 to provide an option for those not wishing to be married under one of the religious acts ([*Indian Legal Documents*] n.d.).

Shortly after independence the Hindu Code, which was originally meant to reform all aspects of personal law, such as marriage and inheritance, and included provisions for sexual equality, was passed (Liddle and Joshi 1986, 36-38). The controversy surrounding its adoption during the first post-independence election resulted in the least controversial parts of the bill being passed and those relating to personal laws being left aside to a certain extent (ibid.). Joanna Liddle and Rama Joshi note that, although the constitution and Hindu Code addressed some aspects of discrimination, "it was in precisely the area which characterises [sic] women's subordination, the very feature which distinguishes gender oppression from other forms, namely in personal, domestic, sexual and family relations, that the men resisted conceding their privilege" (ibid., 38).

According to Leslie Calman, marriage is considered a social necessity for women of all religions and regions in India (Calman 1992, 124). An article in *Manushi* points out that it is quite unusual for a woman to remain unmarried (Manushi Mar.-Apr. 1994, 12). Even today, most marriages are still arranged (Press Association Newsfile 5 May 1994, 6) as the sexes are not encouraged to mix prior to marriage (Kumari 1989, 15; Calman 1992, 55, 124). In the south, intra-village or intra-family marriages are encouraged in order to strengthen existing family networks, while the northern communities encourage marriage outside the community to expand the family network (Basu 1992, 56-57). The result of these traditions is that women in the north have little contact with their natal families, whereas in the south they tend to have greater access to their family of birth (ibid., 63; Calman 1992, 124). Calman states that the patrilocal system, whereby a daughter leaves her natal home to live with her husband's family, is characterized by the subordination of the bride to men and to older women. The bride finds herself at the bottom of the power structure and is expected to be submissive (ibid.; see also Kumari 1989, 15).

According to many sources, the dowry tradition continues to be a prevalent and integral part of marriage in Indian society (*FEER* 28 Oct. 1993; *India Today* 15 Apr. 1993, 52; *Country Reports* 1993 1994, 1350). This tradition is discussed in section 4.1.2.

3.6.2 Divorce

Divorce is available to all Indian citizens but the form of, and procedure for, the divorce depend on the personal law applicable to the individual (Calman 1992, 54). Under the Hindu Marriage Act the parties have the right to dissolve the marriage according to their custom. Under Muslim law, extra-judicial divorces are permitted. The marriage may be dissolved by the husband at his will (by *talaq*) or by mutual consent (ibid.). The Dissolution of Muslim Marriages Act 1939 permits a woman to apply to

the courts on her own for a divorce decree (*Indian Legal Documents*, 8 Sept. 1987, 18).

The Indian Divorce Act 1969 governs Christian marriages and permits any husband to present a petition to the court to dissolve his marriage on the basis of adultery. Under the act a woman may petition the court for a divorce on one or more of several grounds, including bigamy and rape (*ibid.*, 20-21). The divorce law applying to secular marriages is included in the Special Marriage Act and provides for the possibility of divorce by mutual consent as well as by a petition presented to the court (*ibid.*, 22).

Despite these legal provisions, divorce remains socially unacceptable for women (*BCTWLJ* 1993, 75). A divorced woman is often ostracized by her community and even her family (*CJTL* 1990, 474, 482; ILHR Mar. 1991, 7; *Widows, Abandoned and Destitute Women* 1989, 43), in part because of the high value society places on female chastity (Calman 1992, 54). Calman notes that a single woman may find it difficult to acquire housing (*ibid.*, 138). Divorce may also not be a realistic option, according to Gita Gopal, due to the economic dependence of women on their husbands (*BCTWLJ* 1993, 75).

Under the Hindu Marriage Act (section 24) and the Hindu Adoptions and Maintenance Act (section 18) either spouse has the right to request maintenance (Calman 1992, 153). Before granting a maintenance order, however, the court must inquire into the woman's chastity. Muslim law requires that, upon divorce, the husband pay back the wife her *meher* (dowry) (*Women's World* Dec. 1989, 17). A Christian woman is entitled to maintenance of up to one-fifth of her husband's net income during the divorce proceedings and unlimited permanent maintenance following the divorce (*CJWL* 1993, 287-288; Calman 1992, 153).

Section 125 of the Code of Criminal Procedure requires that all divorced husbands support destitute ex-wives. A controversy arose when a Muslim woman named Shah Bano sued her ex-husband for support under this section. [For further details, see the following: Engineer, Ashghar Ali. 1987. *The Shah Bano Controversy*. Bombay: Orient Longman.] The court consulted Muslim personal law and ruled that section 125 should apply to Muslims. Muslim religious leaders protested that the court was overstepping its boundaries by interpreting Muslim law (Engineer 1987, 9).

The Muslim Women (Protection of Rights on Divorce) Act was passed in 1986 under pressure from Muslim leaders, including demonstrations and the defeat of several government candidates in national elections, during and after the Shah Bano decision (*ibid.*, 14; *CJTL* 1990, 480). Under the act, Muslim women who divorce are entitled to a "reasonable and fair provision and maintenance ... to be made and paid ... within the *iddat* period ..." and to an amount equal to the *meher* (*CJTL* 1990, 481). This act is seen to effectively exempt all Muslims from the requirement of section 125 of the Code of Criminal Procedure. It has been denounced by one author as a "triumph of religious rights over women's rights in India" (*ibid.*). Calman asserts that it constitutes "a step away from the equal treatment of women under the law" (Calman 1992, 161).). The act fails to provide for the return of property owned by the wife and may require that her family support her after the *iddat* period (a three month period during which she cannot remarry). According to Anika Rahman, writing in the *Columbia Journal of Transnational Law*, it is unlikely that she would receive this support (*CJTL* 1990, 481 n.1). Rahman further states that although the act provides for institutional support, it is equally unlikely to be given to a divorced woman (*ibid.*). She also criticizes the act for not promoting a divorced woman's self-sufficiency but rather encouraging dependence (*ibid.*). In his book on the Shah Bano controversy, Engineer states that Islamic law, which was purported to be the basis for the act, does not provide institutional or family support for a divorced woman, and that neither of these types of support is likely to be enforceable (Engineer 1987, 16-17).

With respect to custody of children, the Hindu Minority and Guardianship Act 1956 declares the mother to be the legal guardian of a child until the child's fifth birthday at which time the father becomes the guardian. Under the Hindu Marriage Act 1955, a court may make orders concerning custody ([*Indian Legal Documents*] n.d., 23). In Muslim law, a mother has custody of a male child until he reaches seven years of age and of a female child until she reaches puberty. If the mother remarries, however, custody of all children reverts to the father (*ibid.*, 24).

3.6.3 Property

Property is also governed by the religious laws of each community. The Hindu Succession Act grants equal inheritance rights to Hindu women (*Country Reports 1993 1994*, 1351). However, according to *Country Reports 1993*, in practice married daughters rarely inherit a share of their parents' property (*Country Reports 1993 1994*, 1351). The most prevalent system of property control (co-parcenary) is an arrangement which, according to one source, creates an inequality of access to property for women (*BCTWLJ 1993*, 80-88).

According to several reports, in late July 1994 the "wealthiest and most progressive state", Maharashtra, amended the Hindu Succession Act 1966 to "enable a daughter to inherit property in the same manner as a son" (*The Gazette* 22 Aug. 1994; *Chicago Tribune* 14 Aug. 1994; *The Washington Times* 6 August 1994; AP 1 Aug. 1994). A government spokesman said the law was intended to "help tackle gender bias and the practice of dowry" (*ibid.*). There is no mention in the reports of changes to the inheritance rights of widows.

Wives are reported to have little or no control over their husbands' property (*BCTWLJ 1993*, 73; see also *Country Reports 1992 1993*, 1144). Under the Hindu Succession Act, which tried to make some provision for women, when a Hindu male dies intestate the surviving widow, sons, daughters and mother all take one share; however, the sons receive this share in addition to the share that they acquire at the time of their birth. As well, daughters have no right to partition the family home until the male heirs decide to divide their shares (*CJWL 1993*, 287). Muslim personal law specifies that a daughter should receive half of a son's share of the parental property (*Country Reports 1993 1994*, 1351).

4. ISSUES OF CONCERN

According to official statistics, violence against women in various forms has been increasing over the past decade (*India Alert Bulletin 1992*, 18; *Country Reports 1993 1994*, 1350). *Country Reports 1992* lists among serious human rights abuses in India "inadequate implementation of laws protecting women's rights; the infrequent prosecution of 'dowry deaths' (wife murder); and the widespread exploitation of ... child labour" (*Country Reports 1992 1993*, 1134). This section discusses selected issues affecting women in India including domestic violence, female infanticide, *sati*, abuse and rape by civilians, military forces and militants, and prostitution and child marriages. Alternatives available to women affected by violence are discussed primarily in Section 5.

4.1 Domestic Violence

4.1.1 Spousal Abuse

According to the report written by the voluntary organization Integrated Human Development Services Foundation (IHDSF) on a conference entitled "National Workshop on Family Violence Against Females", held in New Delhi in 1988, wife beating is widespread in India (IHDSF 15-18 Feb. 1988, 20).

It is said to be the most common but least reported crime (*Lawyers Collective* Apr. 1991, 4), cutting across all castes, classes, religions and education levels (IHDSF 15-18 Feb. 1988, 20; Bhuiyan 1991, 36). Author Rubia Bhuiyan notes that women are often reluctant to report battering to the authorities since they risk being thrown out of their homes and accused of adultery (ibid.).

The majority of the women who went to the Bombay Women's Centre, a women's shelter, between April 1990 and April 1991, had been abused and sometimes brutally beaten by their husbands or in-laws (*Manushi* Jan.-Feb. 1992, 19; see also IHDSF 15-18 Feb. 1988, 19). Others had been thrown out of their marital homes, deserted by their husbands, or harassed by their husband and in-laws, or they had left because their husbands had committed bigamy or had extra-marital affairs (*Manushi* Jan.-Feb. 1992, 19-20).

4.1.2 Dowry Violence

The government officially banned dowry in 1961 with the Dowry Prohibition Act, but this law proved ineffective (*The New York Times* 30 Dec. 1993; *ILSA Journal of International Law* 1992, 115-116; Calman 1992, 132). In fact, the practice is reported to be on the increase (*San Francisco Chronicle* 7 Mar. 1995; *Dallas Morning News* 7 Mar. 1993, 3; *The New York Times* 30 Dec. 1993). The director general of the Anthropological Survey of India, K.S. Singh, in his report on an eight-year study of Indian habits and customs, indicates that 40 per cent of the 4,635 communities in the study believed in dowry giving (*India Today* 15 Apr. 1993, 50-52). While it was formerly the practice only among Brahmins, dowry giving has spread to all castes as well as other religions (*FEER* 28 Oct. 1993, 41; *India Today* 15 Apr. 1993, 52; Calman 1992, 56; Kumari 1989, 7-8).

The pressure to provide a dowry is keenly felt by families. Female foeticide and infanticide are said to occur in part because families consider girl children to be poor investments (*WIN News* Autumn 1990a, 22; Calman 1992, 126). Whereas a boy is viewed as an asset, a girl can have a devastating economic impact on a family since dowries can cost up to five years' salary (ibid.; *ILSA Journal of International Law* 1992, 112). The pressure to provide a dowry is also felt by female children themselves. In Kanpur three sisters were reported to have committed suicide in order to spare their parents the humiliation of not being able to provide a dowry, without which they could not get married (IHDSF 15-18 Feb. 1988, 9). One study indicates that increasing development and education do not seem to be eradicating the practice of dowry (Kumari 1989, 23).

The Dowry Prohibition Act was amended in 1984 [The Dowry Prohibition (Amendment) Act of 1984 was strongly criticized by women's groups and in the media. See Calman (pp. 134-137) for a critique.] and 1986. The 1986 amendments reverse the burden of proving that there was no demand for dowry to the person accused of taking or abetting the taking of dowry (*ILSA Journal of International Law* 1992, 115-116; Calman 1992, 132, 134-137). They also increase the minimum penalty for acceptance of a dowry or for assisting in the negotiations for a dowry from a 6-month to a 5-year jail term and a fine of around \$US 1000.00 (*San Francisco Chronicle* 7 Mar. 1995). The law, however, is "rarely enforced" (ibid.).

While illegal, it is customary in India for a bride's family to provide a dowry: the practice is viewed variously as a way for the bride to make an economic contribution to the marriage, as a means of paying for her maintenance or as a form of inheritance which ostensibly tries to redress the fact that women have fewer property rights than men (Calman 1992, 125; *ILSA Journal of International Law* 1992, 110; Kumari 1989, 2, 8). Despite two 1985 supreme court judgements which declared the property given as a dowry to belong to the bride, in practice, the dowry goes to the husband and his family (Kumari 1989, 21 n.12; Calman 1992, 126) and their desire for wealth and status frequently

overrides the merits of and putative concerns for the bride (Kumari 1989, 1; *ILSA Journal of International Law* 1992, 110).

Through their daughter-in-law's dowry, families can acquire material goods that may otherwise have been outside their means, and they commonly demand more dowry after the wedding (*The New York Times* 27 Aug. 1994). Brides often become victims of mental and physical abuse when they fail to meet these demands. In a large number of cases the abuse culminates in suicide or murder (*ibid.*; *FEER* 28 Oct. 1993, 40; *The Irish Times* 30 May 1994; Kumari 1989, 1; *ILSA Journal of International Law* 1992, 110). A widower can remarry and collect a second dowry (*Dallas Morning News* 7 Mar. 1993, 3; Calman 1992, 127).

The 1993 census indicates that approximately 5,000 dowry-related deaths, including suicides, were reported in eight states and the capital. The highest number were recorded in Uttar Pradesh (1952), followed by Maharashtra (746), Andhra Pradesh (575), Madhya Pradesh (370), Bihar (336), Rajasthan (271), Karnataka (266) and Punjab (147). New Delhi reported 107 dowry-related deaths for that year (*The Irish Times* 30 May 1994; Press Association 5 May 1994). Official estimates are believed to under-report the actual number of cases, and numerous cases are dismissed as attempted suicides or accidental deaths (ILHR Mar. 1991, 5; Calman 1992, 127; *ILSA Journal of International Law* 1992, 113). Many of the deaths are attributed to accidental burns caused by kerosene stove explosions or "mysterious kitchen fires" (*ibid.*; *The New York Times* 27 Aug. 1994; Kumari 1989, 2; Calman 1992, 127). Reportedly, some 40 to 80 per cent of all burn cases in India are young, newly-married women (*ILSA* 1992, 113; ILHR Mar. 1991, 6). Although most of this type of violence occurs in urban areas, dowry deaths are reported to be increasing in rural areas as well (*ibid.*, 114).

The 1986 amendments to the Dowry Prohibition Act also address dowry violence, making dowry-related murder a crime under the Indian penal code (*ibid.*, 137; *ILSA Journal of International Law* 1992, 117) and creating a presumption of guilt against a husband or his relatives in cases where a woman has died under questionable circumstances and where it is proven that she was subjected to harassment or cruelty in relation to demands for dowry (*ibid.*; *Country Reports* 1993 1994, 1350). The 1983 Criminal Law (Second Amendment) Act, which defines "cruelty" and makes it an offence under the Indian penal code, requires authorities to conduct a post-mortem in the death or suicide of any woman married less than seven years (Calman 1992, 137; *ILSA Journal of International Law* 1992, 117). The 1983 legislation attempts to strengthen the prosecution of dowry deaths further by making the "abetment of suicide" an offence; it also introduces an amendment to the Indian Evidence Act which raises a presumption of abetment against a husband (or his relatives) whose wife has committed suicide in cases where they were married less than seven years and where there is proof that he (or his relatives) subjected her to cruelty (*ibid.*; Calman 1992, 137).

A number of sources consider these laws a serious effort on the part of the government to bring an end to dowry deaths, but all point to the lack of adequate enforcement as a major problem (Kumari 1989, 81; ILHR Mar. 1991, 6; *BCTWLJ* 1993, 71; *ILSA Journal of International Law* 1992, 118). The number of reported cases has increased significantly since 1986 when, according to government statistics, 1319 dowry deaths were registered (*ibid.*; ILHR Mar. 1991, 6; *Country Reports* 1993 1994, 1350). *Country Reports* 1992 points out that approximately 95 per cent of reported dowry deaths do not result in convictions (*Country Reports* 1992 1993, 1144; see also *ILSA Journal of International Law* 1992, 118). There have been a few exceptions. For example, in March 1993, three family members were sentenced to death in a dowry case (*Country Reports* 1993 1994, 1350). According to the South Asia Human Rights Documentation Centre (SAHRDC), a documentation network which investigates, documents and disseminates information on human rights in the region, and *Country Reports* 1993, of

the 329 arrests for dowry deaths between 1989 and 1991, only 45 cases went to trial and only 3 persons were convicted (SAHRDC Feb. 1992, 33; *Country Reports 1993* 1994, 1144). At the same time, government reports indicated that the total number of dowry deaths in 1991 alone was estimated at 5,157, "up about 7 percent from 1990" (*ibid.*). In most cases it is difficult for the plaintiff to meet the burden of proof (*ILSA Journal of International Law* 1992, 118). Acquittals have reportedly been obtained due to corrupt police and physicians who tamper with evidence (*Human Rights in Developing Countries Yearbook 1991* 1991, 184; *Country Reports 1992* 1993, 1144).

Critics suggest that there is tacit acceptance of the dowry system by the largely male-dominated establishment and accuse the police of deliberate inaction in dowry cases (ILHR Mar. 1991, 7; see also *ILSA Journal of International Law* 1992, 139-140; Rhodie 1989, 399). *Country Reports 1993* states that "... lawyers handling dowry cases complain that judges and prosecutors (usually men) are uninterested in cases of domestic violence and are susceptible to bribes" (*Country Reports 1993* 1994, 1350; see also *ILSA Journal of International Law* 1992, 140).

The 1986 amendments to the Dowry Prohibition Act call for the appointment of regional dowry prohibition officers to investigate claims of dowry abuse (Calman 1992, 137). Another attempt to address the issue has been made by the Delhi Administration Directorate of Social Welfare, which set up a reconciliation-cum-guidance bureau and Anti-Dowry Cell to educate the public and to provide counselling and mediation services or legal assistance. The Anti-Dowry Cells are intended to provide a place for women who are victims of dowry violence to discuss their situation in private (Kapur 8 Aug. 1994). The organization has, however, been described as "ineffective"; complaints reportedly remain unattended for too long and counselling lacks privacy and professional continuity (Kumari 1989, 85-86). According to Naina Kapur, some people have criticized the Anti-Dowry Cells for merely espousing "traditional family values" and counselling women to return to their husbands. She states that there are often complaints that the officers involved do not believe the women who approach them and will not file the case in the appropriate police records (Kapur 8 Aug. 1994).

4.2 Widow Burning (*Sati*)

The tradition of *sati* is the Hindu practice whereby a widow "attains virtue" by burning on her husband's funeral pyre (Liddle and Joshi 1986, 19; ILHR Mar. 1991, 8; IHDSF 15-18 Feb. 1988, 23). The practice is said to continue in some rural areas (*Rocky Mountain News* 20 Mar. 1994). Ratna Kapur states that, while instances of *sati* are rare, the mere fact that they do occur is dangerous (Kapur 29 Apr. 1994). In Rajasthan, where the tradition is strong, a *sati* is a candidate for deification and shrines and temples are sometimes built for her (*Widows, Abandoned and Destitute Women* 1989, 41). While K.S. Singh states in his report that virtually every community believes in the remarriage of widows (*India Today* 15 Apr. 1993, 52), a report by the International League for Human Rights (ILHR) states that there are some religious fundamentalists who argue that *sati* is their religious right (ILHR Mar. 1991, 9).

Although the Abolition of Sati Act dates back to 1829 (Jethmalani 1990, 70), the practice of "widow-burning" continued. In 1987, the Commission of Sati (Prevention) Act was passed (*ibid.*). It has been criticized as inadequate for several reasons: it does not ban the propagation of *sati* practice; it equates *sati* with simple suicide; and it punishes the person attempting *sati* rather than those who may be encouraging or even forcing the practice (*ibid.*). The constitutionality of the Act is challenged by religious groups who claim that it interferes with freedom of religion which is protected by the Constitution (Jethmalani 1990, 71).

Sati reportedly has its roots in the low social status of women in general and of widows in

particular (*WIN News Winter 1988, 55; Widows, Abandoned and Destitute Women 1989, 46*). In the past, tradition held that a widow was bad luck and she was prohibited from participating in auspicious functions or celebrations. "The tradition [of *sati*] ... did not permit a widow to eat well, to wear good clothes [or] to sleep on a bed" (IHDSF 15-18 Feb. 1988, 23; see also ILHR Mar. 1991, 9; Calman 1992, 54). Today in Rajasthan, widows are reportedly required to shave their heads and beg for food at their in-laws' house (ILHR Mar. 1991, 9). One source indicates that widows are expected to tolerate advances from all male members of the family (*WIN News Winter 1988, 55*). According to the IHDSF workshop participants, a widow is vulnerable after her husband's death and is ostracized, "which [is] nothing short of mental and emotional torture" (IHDSF 15-18 Feb. 1988, 23). In Rajasthan a widow is not usually welcome in her parents' home (ILHR Mar. 1991, 9). The workshop also reported that 31 per cent of women in prostitution are widows (IHDSF 15-18 Feb. 1988, 23).

A number of sources dispute, for various reasons, the definition of *sati* as a voluntary practice (ibid.; *Widows, Abandoned and Destitute Women 1989, 44-45; Jethmalani 1990, 70*). According to the workshop participants, if a widow's in-laws do not wish to share her husband's property with her, they may force her to "become *sati*" (IHDSF 15-18 Feb. 1988, 23).

Insofar as the community is concerned, there is economic gain to be made from the commercialization of a *sati* and the worship surrounding her death (*Widows, Abandoned and Destitute Women 1989, 46; ILHR Mar. 1991, 8; Jethmalani 1990, 72*). The latter practice is illustrated by Roop Kanwar's story. In September 1987, the 18 year-old widow was allegedly dragged from her hiding place to be sacrificed on the funeral pyre of her husband in Rajasthan. Subsequently, the proponents of *sati* glorified her sacrifice by having town celebrations and by constructing a temple in her honour, without interference from the authorities (*WIN News Winter 1988, 55; ILHR Mar. 1991, 8*). In 1990, 400 people attended a celebration of her death, even though the celebration was banned (ibid.). An article in *Women, Law and Development-Action for Change* points out that the region where this incident occurred is a fairly "modern" one where the literacy rate is relatively high (Jethmalani 1990, 72).

4.3 Female Foeticide and Infanticide

There has been a steady decrease over the last century in the ratio of females to males in India (*Country Reports 1993 1994, 1351; Human Rights in Developing Countries Yearbook 1991 1991, 183; ILSA Journal of International Law 1992, 111*). In 1991 there were 927 females per 1,000 males, although the ratio varies widely among regions (*Country Reports 1993 1994, 1351; see also United Nations 1993a, 59*). For example, according to a 1988 article in *India Today*, among the Bhati people there are only 550 women to every 1,000 males (Rhodie 1989, 395). Two reasons advanced for the distorted sex ratios, both linked to the cultural preference for sons, are the practices of abortion of female foetuses (female foeticide) and female infanticide (*Country Reports 1993 1994, 1351*).

It is reported that amniocentesis tests are widely used to determine the sex of an unborn child, resulting in a disproportionate percentage of female fetus abortions (*Country Reports 1993 1994, 1351; The Toronto Star 4 Feb. 1993, A17; United Nations 1993a, 59; ILSA Journal of International Law 1992, 111*). A study conducted in 1986 in Bombay found that, although all classes take advantage of the technology, sex-determination tests are predominantly used by the lower and middle classes (*Legal Perspectives n.d. Doc No. 18, 29*). A 1991 survey estimated that every year 50,000 female foetuses are aborted as a result of sex-determination tests (*The Toronto Star 4 Feb. 1993, A17; The Times 5 Mar. 1994, 11*), and that number has reportedly multiplied (ibid.). Sex-determination tests have been banned in Punjab, Maharashtra and Rajasthan (AP 23 May 1994; *The Irish Times 30 May 1994; Country Reports 1993, 1144*). A letter from the Embassy of India in the United States, printed in *The Washington Times*, states that the tests are also banned in Haryana (*Washington Times 13 July 1994*).

WIN News reported in 1990 that the results of a ban in Maharashtra had not been very successful (*WIN News* Autumn 1990a, 22) and other reports state that many doctors in Bombay, the capital of Maharashtra, still perform the tests and the subsequent abortions (*The New York Times* 27 Aug. 1994; AP 23 May 1994).

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed by parliament on 26 July 1994 (IPS 10 Aug. 1994) and took effect in December 1994 (*The New York Times* 27 Aug. 1994; *Chicago Tribune* 11 Dec. 1994; *Gazette* 9 Jan. 1995). The India-wide law provides for fines of about \$US 320.00 and up to three years in prison for advertising gender determination tests or working in a testing centre (IPS 10 Aug. 1994; *The New York Times* 27 Aug. 1994). Only women over the age of 35 or those who have certificates stating there are medical reasons for the tests are permitted to have them; women who take the tests simply to determine the gender of the foetus can be prosecuted and fined or imprisoned (ibid.).

One of the criticisms of the law is that it does not provide for the registration of ultrasound machines, many of which are put into vans and driven from village to village (ibid.). Madhu Kishwar, the editor of *Manushi* and a professor of literature at the University of Delhi, does not believe the national law will be more effective than the state laws which were passed earlier: "All you are doing with this new law is giving the police a new potential for extorting bribes ... from doctors" (ibid.) The director of policy research at Population Action International qualified her praise for the law by adding: "It remains to be seen whether it can be enforced" (*Chicago Tribune* 11 Dec. 1994).

One fear expressed by women's groups is that the restrictions on sex determination tests will increase the number of cases of female infanticide (*The New York Times* 27 Aug. 1994). In cases of female infanticide, girl children are reportedly strangled, poisoned, starved, abandoned or malnourished (IHDSF 15-18 Feb. 1988, 12). There is some debate as to the extent of the practice. Joseph Gathia maintains that only a very small proportion of the population deliberately kills their daughters (Gathia 1990a, 4). According to human rights groups, approximately 10,000 cases of female infanticide occur each year in India (*Country Reports* 1992 1993, 1144). Naina Kapur, a lawyer, points out that female infanticide "is not a national phenomenon" although it does exist in several pockets of the country (Kapur 8 Aug. 1994). The letter from the Indian embassy, referred to above, also states that it is not practised all over India (*The Washington Times* 13 July 1994), and *Country Reports* 1993 says that female infanticide occurs mainly in rural areas (*Country Reports* 1993 1994, 1351). However, a 1993 report by the National Foundation of India, a private group working on issues of child welfare, gave an estimation of 300,000 female newborns "either being killed outright, or suffering such neglect that they die of illness or starvation" (*The New York Times* 27 Aug. 1994). In 1993, New Delhi police "reported an 'alarming incidence' of such killings, particularly in poorer districts" (ibid.). A survey by the Indian Council of Child Welfare, a private organization supported by the government and by private organizations, found that 44 per cent of households in some villages supported the practice (*San Francisco Chronicle* 7 Mar. 1995), and a 1992 study in Tamil Nadu found that 60 per cent of the women questioned admitted having killed their infant daughters (ibid.).

Section 318 of the Indian Penal Code states that it is an offence to conceal the birth of a child by secretly disposing of the dead body, the penalty being a fine or imprisonment of up to two years or both. Annotations on this section by Ranchhoddas and Thakore note that this particular provision was intended to prevent infanticide (Ranchhoddas and Thakore 1987, 197). Section 317 of the penal code also makes it an offence to expose or leave a child with the intention of wholly abandoning it (s. 317) (ibid.).

The governments of some states have tried to stop the practice of female infanticide, although an article in *The Times* claims that there is little political will to stop infanticide (*The Times* 5 Mar. 1994). One programme in Tamil Nadu establishes a trust fund at the registration of a girl's birth. That fund, which comes to maturity when she reaches marrying age, is meant to be enough to pay for her dowry (*WIN News* Summer 1993, 61) as the pressure to provide a dowry is said to be part of the reason for the practice of female foeticide and infanticide (see section 4.1.2). The programme, however, requires that the mother be sterilized. As a result only 40 girls were registered in the first year of its operation (*ibid.*). Some NGOs have been offering direct incentives, such as credit schemes, loans for sewing machines, dairy cows, and goats to women to keep their girl children alive for six months or longer. The programme managers believe that once a child is six months old the risk of it being killed is greatly reduced (*The Globe and Mail* 20 Nov. 1993a, D-3). Naina Kapur states that there are several women's organizations working on eliminating the practice (Kapur 8 Aug. 1994).

4.4 Child Brides

The Child Marriage Restraint (Amendment) Act was passed in 1976, making 18 the minimum age of marriage for women (*Country Reports* 1993 1994, 1351). *Country Reports* 1993 notes, however, that enforcement of the act is "uneven" (*ibid.*). While one United Nations report indicates the national average of marriage is 18.7 (United Nations 1991, 28), *The New York Times* reports that child marriages are quite common (*New York Times* 21 Oct. 1991, A7). It quotes an Indian columnist who says, "90 percent of girls in villages get married before 13 ... You're a spinster at 16" (*ibid.*). The United Nations also indicates that there continue to be cases of girls married at very young ages, particularly in rural areas (United Nations 5 Oct. 1989, 24).

Child marriages are reportedly most common in Rajasthan (*WIN News* Summer 1994, 56). In 1992, the state's chief minister appeared on television, as part of a campaign against child marriage, to order an end to the practice (*Dallas Morning News* 7 Mar. 1993, 9). One campaign activist and her husband were attacked and she was raped by people opposing the campaign (*ibid.*; *Country Reports* 1993 1994, 1351).

The selling of child brides, some as young as ten, to foreigners has become increasingly common in recent years in Muslim-dominated, impoverished areas of India and particularly in Hyderabad (UPI 3 Jan. 1994; *ibid.* 10 Dec. 1993). In 1991 the case of a ten-year old girl named Ameena attracted national and international attention. She was married against her will, by her parents, to a sixty-year old Saudi Arabian man. He was arrested when flight attendants found her crying on the plane that was to take them to New Delhi. He was charged with kidnapping, fraudulent marriage, forgery and use of forged documents (*The New York Times* 21 Oct. 1991, A7), but he was released on bail and returned to Saudi Arabia (AP 16 Mar. 1992). In March 1992, Ameena was returned by the court to her parents (*ibid.*). In a similar case in 1993, a sixteen-year old unwilling bride was discovered to have been sold to a Saudi man by her father. The Saudi was charged with abduction, rape and criminal fraud (UPI 10 Dec. 1993).

Recently, the Indian government imposed special marriage restrictions on foreigners to deter the increasing number of men who are buying Muslim child brides and using them in the sex-slave trade outside of India (UPI 3 Jan. 1994). The new regulations require that the Muslim Wakf Board, which oversees Muslim personal laws, clear all marriages of Indian women to foreigners (*ibid.*).

4.5 Rape

Reports of violence against women, in particular rape, have been increasing over the last few years (*India Alert Bulletin* 1992, 18). According to a 1985 review by the Bureau of Police Research and

Development, approximately 20,000 rapes were committed per year. Police state that only one-quarter of the actual total number of rapes are reported (Kelkar 1992, 80).

Sections 375 and 376 of the Indian Penal Code, which were substantially changed by the Criminal Law (Amendment) Act 1983, deal with sexual offences. Section 375 defines rape as sexual intercourse with a woman against her will and without her consent, and identifies certain conditions in which, even with a woman's consent, sexual intercourse constitutes rape. It also stipulates that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape"; the code punishes sexual intercourse by a husband with his unconsenting wife only if the couple is separated. Section 376 provides for a minimum punishment of seven years' imprisonment for rape, ten for custodial rape, gang rape, and rape of a pregnant woman or girl under 12. A court may impose a lesser sentence "for adequate and special reasons to be mentioned in the judgement" (Ranchhoddas and Thakore 1987, 218-220; see also PUDR May 1994, 8-15).

The Criminal Law (Amendment) Act also made an important change to section 114(a) of the Indian Evidence Act. Previously, a woman was required to provide corroborative evidence to support her claim that she had been raped, and the onus was on her to prove that she did not consent to the sexual act. The Evidence Act now states that, provided the prosecution has established that the sexual act took place and the woman states that she did not consent, the court "shall presume that she did not consent" (PUDR May 1994, 8, 11). Ranchhoddas and Thakore, in their commentary on the penal code, suggest that this change acknowledges the fact that "in India ... a disclosure of this nature is likely to ruin the prospect of a girl's rehabilitation in society for all times to come and unless her story was painfully true she would not have taken such a grave risk merely to malign the accused" (Ranchhoddas and Takore 1987, 219). Indeed, Asia Watch and Physicians for Human Rights, in a report on Kashmir, state that "victims of rape are often stigmatized, and their testimony and integrity impugned" (Asia Watch and PHR 9 May 1993, 1 n.3; see also Varadarajan Aug. 1992, 9). Amnesty International adds that, in addition to the physical and emotional effects of rape, such abuse has "considerable social repercussions for the position and status of women in the community" (AI Dec. 1991; see also Varadarajan Aug. 1992, 9; Asia Watch and PHR 9 May 1993, 16). The mother of two young women victims of rape was reported to have feared for the marriageability of her daughters after they had been attacked (AI Dec. 1991).

The Peoples Union for Democratic Rights (PUDR), in its publication *Custodial Rape: A Report on the Aftermath*, comments, however, that "the presumption in favour of the complainant can effectively be diluted if not totally eroded by the grounds available to the defence" (May 1994, 14). The accused can counter the court's presumption by bringing in evidence that the woman's testimony is unreliable. In some cases, medical evidence, needed to prove injury, may be lacking or inconclusive. The woman may have willingly accompanied the accused, may not have cried out, or may have delayed in reporting the incident. Such factors can all be used to undermine the prosecution's case. Moreover, the 1983 amendments did not delete the provision in the Evidence Act that in a prosecution for rape, "it may be shown that the prosecutrix was of generally immoral character" (ibid.). In numerous cases, the women's testimony was held to have little or no value. (For examples for such cases see sections 3.1 and 4.5.1 as well as PUDR May 1994, 8-9, 11 14, 18-19; Asia Watch and PURD 9 May 1993, 6; and Calman 1992, 119).

4.5.1 Custodial Rape

Women, who make up from two to six per cent of the prison population (*Country Reports 1993* 1994, 1342), are particularly vulnerable to attack and rape while in custody whether in prison or in other forms of official custody (*HRW 1992*, 415; see also AI 1993, 159). *Country Reports 1993* adds

that women prisoners have in some instances been sold to brothels (*Country Reports 1993 1994*, 1342).

While there have been convictions for custodial rape, they are not common or well publicized (*Country Reports 1993 1994*, 1342). Amnesty International expresses concern over what it calls "the lack of official determination to bring the perpetrators of custodial crimes to justice" (AI 1993, 160). The PUDR report, which reviews a number of cases of custodial rape and the legal action taken in each, concludes that "while the letter of the law has changed [with the 1983 Criminal Law (Amendment) Act], the attitudes of police and judicial authorities have remained the same" (PUDR May 1994, 24).

In one case in 1989, the supreme court reduced by one-half the sentence of two police officers convicted of custodial rape. The court reasoned that, because the victim was considered to be of "dubious virtue," there was not any great degree of harm inflicted upon her by the multiple rapes she suffered (Kapur 1991, 8). The convicted rapists were released (*ibid.*; see also *Legal Perspectives* n.d. Doc. File No. 12, 18-19). Ten years earlier the supreme court had, partly for similar reasons, overturned a decision convicting two officers of raping a young woman named Mathura, who was being held in their custody. In its decision, the court stated that the fact that the woman did not initially resist meant that she consented, despite the belief of a lower court of appeal that she could not have successfully resisted her assailants (Calman 1992, 66). Traces of semen found on her clothes after the attack were considered to be evidence of previous sexual encounters, indicating to the court that she was of poor moral character (*ibid.*, 65-66).

A March 1988 Amnesty International report states that between one- and two-thirds of custodial rapes are suffered by women of scheduled castes and tribes (ILHR Mar. 1991, 11; see also AI 1993, 159; PUDR May 1994). *Country Reports 1993* also indicate that most of the above appears to be directed at the poor and the uneducated lower castes who do not understand their right to redress (*Country Reports 1993 1994*, 1341). According to the International League for Human Rights, convictions for custodial rape are not only rare, but when they do occur they generally involve upper caste women (ILHR March 1991, 12).

4.5.2 Rape by Police, Security Forces and Militants in Areas of Conflict

Abuses by security forces, militant forces and police, including rape and other violence against women, have been recorded all over India (ILHR Mar. 1991, 11) but particularly in regions where there is armed conflict, such as Jammu and Kashmir (AI Dec. 1991) and the Punjab (HRW 1992, 409; Asia Watch Aug. 1991, 113, 118-119). Women appear to be particular targets of security forces during counter-insurgency operations in Kashmir (ILHR Mar. 1991, 10; AI Dec. 1991; Asia Watch and PHR 9 May 1993, 1). Amnesty International reports that in Jammu and Kashmir women, in their testimony about abuses during such operations,

mention only occasionally any attempt by the security forces to extract information from them. Rather they appear to have been victimized simply because they live in an area where armed opposition groups are active, or as punishment for perceived support of the separatist cause, or simply because they were Muslims (AI Dec. 1991; see also AI 1992, 139).

A report on Kashmir by Asia Watch and Physicians for Human Rights adds that "both security forces and armed militants have used rape as a weapon: to punish, intimidate, coerce, humiliate and degrade" (Asia Watch and PHR 9 May 1993, 16).

The ILHR quotes a 1990 report by the Committee for Initiative on Kashmir, a Delhi-based human

rights group, which concluded that "the method and manner of attack [by security forces] on women had a definite pattern" (ILHR Mar. 1991, 10). Women are apparently separated from men during cordon and search operations and it is during these crackdowns that women are beaten, raped and tortured (*ibid.*; Varadarajan Aug. 1992, 9; Asia Watch and PHR 9 May 1993, 1).

The ILHR adds that "similar patterns of torture and ill-treatment have been reported in other states [besides Jammu and Kashmir]" (ILHR Mar. 1991, 10). After press reports about rape and harassment of women by security forces in northeastern India, the supreme court declared in July 1991 that the army was under the obligation to adhere to the requirements of the Code of Criminal Procedure when arresting or searching women (AI Mar. 1992, 9). Reports of such abuses persisted, and in March 1992 the high court of Guwahati in Assam ruled that women should no longer be taken to or held at army camps for interrogation (AI 1992, 139).

The number of prosecutions are reported to be minimal for violations of human rights perpetrated by military forces including rape and violence against women (AI 1993, 156). *Country Reports 1993* indicates that, according to official claims, four soldiers were sentenced to ten years each for gang raping a Kashmiri woman, but notes that the actual punishments were never officially publicized (*Country Reports 1993* 1994, 1342). The Home Ministry also gave a note to SAHRDC regarding punishments dealt to security forces in nine cases of rape, extortion or sexual abuse, but, again, the punishments were never publicized (*ibid.*). Asia Watch and Physicians for Human Rights report that in seven court martials that took place between April 1990 and July 1991 involving incidents of rape, deaths in custody, illegal detention and indiscriminate firings on civilians, only one soldier was dismissed. Others had their promotions suspended or marks of "severe displeasure" entered on their files (Asia Watch and PHR 9 May 1993, 8). Human Rights Watch comments that the authorities' response to the rape of 23 women in Kunan Poshpora in Kashmir during a search operation by security forces indicated that the authorities "have been more interested in shielding the army from charges of abuse" than in investigating (*HRW* 1992, 412). Asia Watch and Physicians for Human Rights state that generally the military courts are incapable of dealing with serious human rights abuses perpetrated by security forces and are used to cover up evidence and protect the officers involved (Asia Watch and PHR 9 May 1993, 6). They add that

although there is no evidence that rape is sanctioned as a matter of government policy in Kashmir, by failing to prosecute and punish those responsible, or make known any action taken against security forces charged with rape, the Indian authorities have signalled that the practice of rape is tolerated, if not condoned (*ibid.*, 4).

Rape by militants is reportedly less common than rape by security forces (*ibid.*, 4, 16). Previously, other forms of violence were used by the militants, including threats against women if they did not follow *purdah*. In one instance, militants sprayed paint on women who disobeyed (*ibid.*, 15-16) in an effort to enforce their interpretation of Islamic law (*Lawyers Collective* July 1993, 23). The number of rape incidents is difficult to judge as fear of reprisal from militant groups and the stigma attached to rape, especially in a Muslim area such as Kashmir, keep victims from reporting attacks (Asia Watch and PHR 9 May 1993, 16). In Kashmir, rapes by militants are often referred to as "forced marriages" to mitigate the social stigma of rape (Asia Watch and PHR 9 May 1993, 6).

4.6 Prostitution

Child prostitution in India is reportedly "rampant" (*Country Reports 1993* 1994, 1351). *Country Reports 1992* estimates that there are approximately 100,000 prostitutes in Bombay alone, many of whom are minors held in bondage at brothels (*Country Reports 1992* 1993, 1144; see also *Dallas*

Morning News 7 Mar. 1993, 4).

The Immoral Traffic (Prevention) Act (formerly the Suppression of Immoral Traffic in Women and Girls Act 1956) was amended in 1986. The act, which provides for the imprisonment and fining of persons who are supported by the avails of prostitution, has nonetheless been criticized for allowing police enough latitude to harass prostitutes and even extort money from them (Bhandari et al. 1990, 45).

According to some sources, prostitution is often supported, even encouraged, by the families of the prostitutes (Rhodie 1989, 396; *Manchester Guardian Weekly* 3 Jan. 1993). Often those who enter the "industry" are tribal people who have traditionally performed the most degrading work, are landless or have been allotted the worst land (*ibid.*). The *Manchester Guardian Weekly* reports that in one Rajasthan village many girls are prostituted by their fathers, who do little work and use their daughters as their only significant source of income (*Manchester Guardian Weekly* 3 Jan. 1993).

The Karnataka Devadasi (Prohibition of Dedication) Act 1982 forbids the practice of Devadasi (*Widows, Abandoned and Destitute Women* 1989, 33). Deep-rooted religious and cultural customs are not easily eliminated by legislation however, and although the practice is declining, it is estimated that over 10,000 girls are still dedicated each year (*ibid.*). Although Devadasi is supposed to be the dedication of a young girl to the service of a deity, the present-day practice, according to several sources, is merely religiously-sanctioned prostitution (*ibid.*, 30; *Banhi* 1981, 1). While the national percentage of prostitutes who are Devadasi is 15 per cent, in Karnataka and Maharashtra the number rises to between 80 and 90 per cent (*Widows, Abandoned and Destitute Women* 1989, 34). Girls who have been dedicated are forbidden to marry and are more often than not sold into prostitution upon reaching puberty when they can start making "good money" (*ibid.*, 31). A majority of the families who dedicate their daughters are from the poorer economic strata and lower castes (*Banhi* 1981, 1) and material gain is an important reason for the practice (*Widows, Abandoned and Destitute Women* 1989, 30). In addition to the money a girl brings in as a prostitute, the fact that she remains unmarried means that she can inherit family property and thereby keep it in the family (*ibid.*).

A study on women and AIDS in India says that prostitutes are being blamed in large part for the spread of the disease, engendering further discrimination against an already disadvantaged group (Bhandari et al. 1990, 14). The director general of the Indian Council of Medical Research, A. S. Paintal, was reported to have claimed that women are having "AIDS ... poured into them ... because they did not stop co-habiting with foreigners" (*ibid.*).

5. ALTERNATIVES AVAILABLE TO WOMEN

According to Ratna Kapur, the alternatives available to women who are victims of gender discrimination depend on many factors, including caste, socio-economic class, religion, marital status and the region in which they live (Kapur 29 Apr. 1994). Women who are knowledgeable in regard to their rights are more likely to take advantage of those recourses which are available (*ibid.*).

5.1 Family Support

As women are, for the most part, financially dependent on their husbands, it is difficult for them to leave their homes (Kapur 29 Apr. 1994). In addition, although citizens are permitted to travel freely within the country (except in certain border areas) and foreign travel and emigration are not generally restricted (*Country Reports* 1993 1994, 1348), Ratna Kapur remarks on the lack of mobility for women and notes that the financial constraints on those who wish to leave their homes are severe (Kapur 29

Apr. 1994). According to a 1988 report by the Integrated Human Development Services Foundation, when she marries, a bride leaves her natal home to live with her husband's family and should she be abused, her natal parents will frequently discourage her from leaving, or even send her back to an abusive husband (IHDSF 15-18 Feb. 1988, 9). Calman states that a married woman who leaves her home will often receive no help from her parents (1992, 138; see also *Dallas Morning News* 7 Mar. 1993, 5), will not have many opportunities to remarry and "will face widespread social opprobrium" (Calman 1992, 138). Naina Kapur says that a woman who returns to her family for support when she is a victim of domestic violence will often be told to return to her husband to try to work out the problems because her family does not want to interfere. She does state, however, that if after several attempts to return to her husband she still wishes to leave, the woman will be able to return to her parents home (Kapur 8 Aug. 1994).

5.2 Panchayats (Village Councils)

Advice is often given to rural women by the *panchayat* on the treatment they receive at home (*Women Magazine* July 1993, 64). As noted earlier, the *panchayats* used to be male institutions; however, now 30 per cent of the seats in the *panchayat* are reserved for women (*India Today* 15 Apr. 1993, 52). Ratna Kapur believes that, with further education concerning the role of the *panchayats* and their accountability to the people who have elected them, they could become effective recourses for women (Kapur 29 Apr. 1994).

5.3 Shelters

There are very few shelters for women in India (Calman 1992, 138; *Dallas Morning News* 7 Mar. 1993, 40); in 1992, there were only 26 "short-stay homes" for battered women in the entire country (Calman 1992, 138). Finding housing is difficult for single women, whether they are victims of abuse or divorced women trying to live independently, especially if they have children (*ibid.*; *Manushi* Jan.-Feb. 1992, 22). In 1985 one shelter was opened in Delhi that accepts children (Calman 1992, 138).

A 1991 article in *The Lawyers Collective*, in which several people working with battered women were interviewed, reported that those shelters which do exist have such lengthy and detailed requirements for admission that, in fact, in an emergency there is no shelter to be found (*The Lawyers Collective* Apr. 1991, 6). The article further reports that the "serious lack of shelters leaves no option to women but to stick on in a violent situation at home" (*ibid.*). Naina Kapur notes that one of the reasons that there are not many shelters is that, as a final resort, a woman's family will generally provide shelter for her (Kapur 8 Aug. 1994).

Calman reports that there are some small-scale operations by women's organizations that provide counselling and limited material resources to women. These organizations will also try to help women file police reports, find lawyers, and find employment and housing (Calman 1992, 139).

5.4 Legal Recourse

Section 14 of the constitution provides that all persons are equal before the law and shall have equal protection of the law (Blaustein Oct. 1990, 48). *Country Reports 1993* states that the Indian judiciary is independent with "strong constitutional safeguards" (*Country Reports 1993* 1994, 1344). It adds, however, that in Punjab and Kashmir the judicial systems "barely function" (*ibid.*, 1345). One report, quoting a family court lawyer in India, states that there have been no convictions for wife-battering in the last ten years (*Dallas Morning News* 7 Mar. 1993, 6).

A woman subject to violence, including domestic violence, has recourse under matrimonial (personal) law, or through civil or criminal courts (*Lawyers Collective* Apr. 1991, 5). Under most of the

personal, religious laws governing marriage, she can file for divorce or separation based on cruelty. A Christian woman whose marriage is governed by the Indian Divorce Act cannot obtain a divorce for cruelty, however, unless she can also prove adultery (*ibid.*).

A civil suit for injunctive relief can be undertaken under the Civil Procedure Code and the Special Relief Act and the common law, in which a woman can request measures preventing her husband from taking further injurious action (e.g., an order for non-molestation). This type of relief can also be obtained under the Family Courts Act. In both cases the only remedy for non-compliance is further legal action for contempt of court (*ibid.*, 7).

In criminal law, a woman victim of violence, including in some cases emotional abuse or demands for dowry, can seek redress under several sections of the Indian Penal Code: "323 (hurt), 324 (hurt by dangerous weapons or means), 325 (grievous hurt), 326 (grievous hurt by dangerous weapons or means), 352 (assault), 337 (assault in order to confine a person), 342 (wrongful confinement), 346 (wrongful confinement in secret), 506 (criminal intimidation)" (*Lawyers Collective* Apr. 1991, 8). With the exception of Section 326, all of the sections coverailable offences whereby the offender is immediately released upon posting bail (*ibid.*). Section 498(a), which makes domestic violence a non-ailable offence, can be invoked by the victim against her husband as well as his relatives. Its use is limited, however, as only the victim herself or a relative through blood or marriage can file a complaint (*ibid.*).

Several sources state that, while it is true that there is a strong judiciary in India, many factors make the courts a difficult recourse for women. Women often lack economic (*Lawyers Collective* Apr. 1991, 7; *CJWL* 1993, 289), geographic (Kapur 8 Aug. 1994) and even political access to the legal system (*CJWL* 1993, 289). Liddle and Joshi write that "a majority of women are both illiterate and poor, unaware of their legal rights, and without the resources to fight for them through the courts" (Liddle and Joshi 1986, 75; see also Kumari 1989, 86; *Lawyers Collective* Apr. 1991, 7). An article in *The Lawyers Collective* points out lawyers are excluded, except with permission of the court, from representing plaintiffs in family courts and women, who are generally less educated than their husbands, thus have more difficulty in presenting their cases (*ibid.*). As well, many women are not accustomed to dealing with public institutions: "Women ... find it extremely difficult to follow procedures and explain their problems to a male judge while constantly being intimidated by their angry husbands" (*Manushi* Sept.-Oct. 1991, 13).

Many sources report that women are often subject to the negative attitudes of the male-dominated judiciary (Liddle and Joshi 1986, 75; *Manushi* Sept.-Oct. 1991, 13; AI Mar. 1994, 6; Calman 1992, 119). An article in *Manushi*, a women's newsletter published in Delhi, reports that there have been instances in the family courts where judges have asked women litigants to stand outside the courtroom while they discuss the case with the husband (*Manushi* Sept.-Oct. 1991, 13). *Country Reports 1993* states that, according to lawyers who deal with dowry cases, judges and prosecutors are not interested in the issue of dowry deaths (*Country Reports 1993* 1994, 1350). Asia Watch and Physicians for Human Rights have reported that "social attitudes which cast the woman, and not her attacker, as the guilty party pervade the judiciary, making rape cases difficult to prosecute and leaving the women unwilling to press charges" (Asia Watch and PHR 9 May 1993, 1 n.3). *CJWL* also reports that women face many social pressures not to make claims (*CJWL* 1993, 289). Additionally, due to a backlog of cases it can take years before a case is heard (LCHR June 1993, 11; *Dallas Morning News* 7 Mar. 1993, 6).

5.5 Police Protection

The attitude of the police towards women who complain of abuse or of crimes committed against them has been questioned by several sources (Kumari 1989, 81-84; 29 Apr. 1994; *Widows, Abandoned and Destitute Women in India* 1989, 85; *Lawyers Collective* Apr. 1991, 4). An article in *The Lawyers Collective*, in fact, states that "in practice, the criminal law has proved to be of little assistance to the woman. This is largely due to the reluctance of the police to intervene positively in a family dispute" (*The Lawyers Collective* Apr. 1991, 8). According to Ranjana Kumari, the approach of the police in dowry violence cases in particular is "at best casual and at worst callous and deliberately harassing and often in complicity with the culprits" (Kumari 1989, 81). Referring to cases of dowry deaths, Eschel Rhoodie notes that the police are "notoriously amenable to bribes" and will rarely investigate a killing that has taken place indoors (Rhoodie 1989, 399). Another source adds that police are more likely to ignore crimes if the perpetrators are influential (*Widows, Abandoned and Destitute Women* 1989, 85). According to Kumari, there is a general mistrust of the police due to a perceived insensitivity on their part (Kumari 1989, 84). An article in the *Dallas Morning News* reports that people are generally afraid of reporting crimes to the police. The article also says that women who report their husbands to the police risk ostracism from family and community (*Dallas Morning News* 7 Mar. 1993, 5).

Naina Kapur does say, however, that there has been an effort on the part of the police force to improve the situation. At least one women's organization, Sakshi, has provided gender sensitization training to police officers (Kapur 8 Aug. 1994).

6. WOMEN'S ORGANIZATIONS

Country Reports 1993 states that there are thousands of organizations working at the grassroots level for the development and advancement of women (Country Reports 1993/1994, 1351). Inter Press Service reports that women in Rajasthan, a traditionally conservative region of the country, have become more active and vocal in recent years (IPS 23 June 1994). Naina Kapur points to the Women's Development Programme in that state as a "model" for empowering rural women by giving them the means to articulate their concerns and to be active with respect to issues including domestic violence (Kapur 8 Aug. 1994). According to Ratna Kapur, women's groups are involved in a wide variety of issues which vary from region to region (Kapur 29 Apr. 1994). For example, in Tamil Nadu and Andhra Pradesh there are strong anti-liquor campaigns led by women (*India Alert Bulletin* Summer/Fall 1993, 28). The *Washington Post* reports that these campaigns constitute the first widespread movement started by rural women (*Washington Post* 18 Feb. 1993). Naina Kapur comments that these campaigns have been very successful and that those two states are now "dry" states (Kapur 8 Aug. 1994). In Uttar Pradesh women's groups have been involved in the issue of religious freedom (Kapur 29 Apr. 1994). Ratna Kapur says that one of the major issues women's groups are addressing is that of population policies resulting from the government's attempts to conform to the structural adjustment policies of international donor agencies (*ibid.*).

A September 1994 broadcast on National Public Radio in the United States interviewed members of a women's group called "Mahila Samatya" (Women's Empowerment) which travels from village to village in five states to assist women in empowering themselves and raise their status in their traditional culture (NPR 11 Sept. 1994). The broadcast focuses on the efforts of a lawyer and feminist activist, Tulika Shlevastrava, to change the attitudes of women towards issues such as education for daughters and the favouring of sons (*ibid.*). To this end, the organization has set up a network of village schools where girls can fit education into their daily household routines (*ibid.*). Progress is slow, in one village in which women traditionally blamed the victim of violence such as rape or domestic abuse, it took the organization many meetings and discussions "to introduce new ideas so women know

there is another way to live" (*ibid.*). The women of the group no longer tolerate domestic violence and, on the day of the broadcast, using the power of peer pressure, they convince a mother-in-law to refrain from beating her daughter-in-law (*ibid.*).

Indian women's organizations are working on various projects, including an anti-dowry campaign that began in the 1970s and was strong in the early 1980s (Calman 1992, 63; Matsui 1987, 81); an anti-rape campaign (*Women in Action* 1994, 14); and grassroots union activity (Rose 1992). Women's role in development continues to be an important issue for women's groups (Calman 1992, 176) and rural women's groups are beginning to form (*ibid.*, 169).

The women's movement in India is not homogenous, and according to the *India Alert Bulletin* there has been an increasing emphasis on religious and caste identities that may endanger the creation of necessary links between women's groups (*India Alert Bulletin* Apr. 1991, 23). There has also been resistance to women's participation in organizations from their families (Calman 1992, 170), as well as from the traditionally privileged groups (*Country Reports* 1993 1994, 1351). Naina Kapur says, however, that in many instances where the community has benefitted from women's education, their activities have been supported (Kapur 8 Aug. 1994). There have been some incidents of violence directed at women's groups (*ibid.*). According to one report, a group of women in Delhi who wanted to establish a women's shelter had stones thrown at them. Men in the area blocked construction of the building for two years (*The Ottawa Citizen* 8 Mar. 1992, A6).

7. GOVERNMENT INITIATIVES

The Indian government has taken some steps that could have far reaching implications for women in India (See sections 3.6.2 on inheritance; 4.1.2 on dowry cells; and 4.3 on gender determination tests). According to a June 1994 report by Xinhua News Agency, it had "finalized a proposal" to establish a national resource centre for women. The main purpose of the centre will be to focus on empowering women (Xinhua 10 June 1994). Other government initiatives undertaken in preparation for the Beijing Conference on Women's Rights include a national credit fund for poor women who are self-employed and a legal literacy manual for women (*ibid.*).

According to the Minister of Press and Information, the government has formulated a National Action Plan for the Girl Child to address the specific needs of girl children and to ensure the equality of the girl child (*The Washington Times* 13 July 1994, A18). The National Commission on Women's Rights has also been involved in the preparation of legislation dealing with child sexual abuse and more recently with legislation on sexual harassment (Kapur 8 Aug. 1994).

In August 1994 the state government of Maharashtra announced a policy to reserve 30 per cent of government jobs and 25 per cent of police station commands for women, as well as abolishing court fees in cases of violence against women (AP 1 Aug. 1994).

7.1 National Commission for Women and National Human Rights

Commission

In January 1992, the National Commission for Women was established to investigate cases of abuse and report to the government on measures to improve the situation of women in India (*Country Reports* 1993 1994, 1350; *Lawyers Collective* April 1993, 9). Public criticism of the establishing legislation before it was enacted indicated that critics believed the commission would be too cumbersome and would not be independent of the government (*Lawyers Collective* July 1990, 11). The states of Maharashtra, Assam, Madhya Pradesh, Rajasthan, Karnataka and Kerala followed suit and

established State Women's Commissions which engendered similar criticism (ibid.).

According to Ratna Kapur, the National Commission for Women mandated a sub-group to draft legislation dealing with child abuse. The legislation has been prepared and includes changes to the way rape is defined and dealt with as well as addressing the issue of child sexual abuse (Kapur 29 Apr. 1994).

In December 1993 the Indian government passed legislation creating the National Commission on Human Rights (Xinhua 18 Dec. 1993), which is to investigate and report on allegations of human rights violations (*Human Rights Update* Oct. 1993, 13). The Lawyers Committee for Human Rights (LCHR) noted beforehand that there was criticism of the proposed commission with respect to its independence from the government and the inadequacy of the role of the commissioners and their investigative powers (LCHR June 1993, 2; see also *Socio-Legal Concern Newsletter* Jan.-Mar. 1994, 3). The fact that the commission was not mandated to deal with complaints of abuses by the armed forces was initially seen as a grave omission (*Socio-Legal Concern Newsletter* Jan.-Mar. 1994, 2). However, *Country Reports 1993* states that the commission now has a limited mandate to investigate such allegations (*Country Report 1993* 1994, 1350).

According to Ratna Kapur, the creation of the National Human Rights Commission and National Commission for Women are positive steps for the human rights situation in India. She believes that, in conjunction with India's recent ratification of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the commissions should provide an effective forum for women. She cautions, however, that these will not be arenas where remedies are obtained but rather where policy and issues concerning women can be brought forward and discussed (Kapur 29 Apr. 1994).

For updated information on the situation of women in India, please consult: *India: Chronology of Events* (March 1995), REFINFO, and the DIRB's Indexed Media Review (IMR), all of which are available at the regional Documentation Centres.

NOTES ON SELECTED SOURCES

Gathia, Joseph

Joseph Gathia is the director of the Centre of Concern for Child Labour in New Delhi. He has edited a number of bulletins on social issues and is the author of a number of publications, including a book, *Women and Child Labour*. In the last few years he has focused his work on the right to education.

Kapur, Naina

Naina Kapur co-founded Sakshi, a New Delhi-based women's centre, three years ago. The centre offers counselling and violence intervention services and advocates for legal reform on women's issues. An advocate at the Supreme Court in New Delhi, Ms. Kapur studied law at King's College, the University of London.

Kapur, Ratna

An advocate at the Supreme Court in New Delhi, Ratna Kapur is also regional training coordinator at the Asia Pacific Forum for Women, Law and Development and co-director of the Centre for Feminist Legal Research in New Delhi. She studied at the University of New Delhi, as well as Harvard and Cambridge universities and is the author of many articles.

Manushi

Founded in 1978, Manushi is a bi-monthly journal about women and society. It is published by the New

Trust, a human rights group that provides free legal aid, litigates public interest legal cases and organizes discussions and protest actions on women's rights. The Trust does not accept grants from funding agencies, but finances its work entirely from sales and individual contributions.

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